

**Exhibit D to
Plaintiff's Renewed
Motion to Compel and Response
To Defendant's Motion for
Protective Order**

**Excerpts from the deposition of
Garlin McClellan**

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION
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6 HAZEL ROBY, as Administratrix
7 of the Estate of RONALD TYRONE
8 ROBY, Deceased,

Plaintiff,

9 VS.

10 BENTON EXPRESS, INC., et al.,

11 Defendants.
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15 The testimony of ALBERT GARLIN McLELLAN,
16 taken at Bozeman, Jenkins & Matthews, 114
17 East Gregory Street, Pensacola,
18 Florida, on the 5th day of October, 2005,
19 commencing at approximately 11:15, o'clock,
20 a.m.
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23

1 clear that you said prior to your direct contact with
2 Craig, you had not had any conversation with anybody
3 about Craig?

4 A That's correct.

5 Q Okay. So, on Sunday, you had a
6 conversation with Craig about what time?

7 A Around 10 minutes till 5:00 or five
8 minutes till 5:00.

9 Q And that's P.M.?

10 A P.M.

11 Q Okay. Sunday, 5:00 P.M., you had contact
12 with Craig. And as of Sunday, 5:00 P.M., when you
13 had contact with Craig, would you have still
14 considered him a friend at that time?

15 A Yes.

16 Q And all the things I asked you before
17 about him being a good employee, would you have
18 considered Craig a good employee still at that point
19 after your 5:00 P.M. conversation with Craig on
20 Sunday?

21 A Yes.

22 Q And you would have considered him still a
23 good guy?

1 A Yes.

2 Q Nothing had changed about -- to your
3 knowledge, about Craig that would have made him not a
4 good Benton Express employee?

5 MR. BROCKWELL: You're talking about
6 prior to the phone call or during the phone
7 call or after the phone call?

8 MR. BOONE: Yeah. Let me ask the
9 question. Let me just go ahead and go
10 forward.

11 MR. BOONE:

12 Q So, at -- at 5:00 or five minutes to 5:00
13 when you talked to Craig, where -- did Craig call you
14 on your personal cell phone?

15 A Right. He called me on the walkie-talkie
16 or direct connect or whatever you want to call it.

17 Q On your cell phone?

18 A That's correct.

19 Q Which would have been at that PIN number
20 186 asterisk 112 asterisk 19311?

21 A Yes.

22 Q And at that time, when your friend Craig
23 called you, what did he tell you?

1 A He wanted to know if I could run the
2 Tallahassee run, which was his regular run.

3 Q Okay.

4 A And that's what he asked me.

5 Q And what did you tell him?

6 A I told him yes, I was backing under the
7 trailer right then.

8 Q Okay. And so, on that Sunday, at 5:00,
9 you were about to do Craig's Tallahassee run?

10 A Yes.

11 Q All right. Anything else you and Craig
12 talked about?

13 A During that conversation?

14 Q Yeah, during that conversation.

15 A Yes. I asked him where he was at. And
16 he said he was still hung up in Atlanta.

17 Q All right. So, at your -- when you
18 talked to him at 5:00 on Sunday, he told you he was
19 still in Atlanta?

20 A Yes.

21 Q And did y'all talk -- did y'all talk
22 about anything else other than the fact he told you
23 he was still in Atlanta?

1 he had a Nextel two-way phone?

2 A A company phone, yes.

3 Q Okay. And he said he was at his aunt's
4 house?

5 A Right.

6 Q His aunt's house?

7 A At his aunt's house.

8 Q Okay. And do you have any idea where his
9 aunt lived?

10 A No, sir.

11 Q Did you ever tell anybody else what
12 Craig told you, that he was at his aunt's house?

13 A Yes, I told the terminal manager.

14 Q And that was Glenn Clark?

15 A That's correct.

16 Q Okay. Now, let's go through exactly what
17 Craig told you one more time because you kind of said
18 a lot. It may have been pretty simple, but I want to
19 make sure I got it all.

20 Craig - conversation. Craig told you he
21 was hung up in Atlanta?

22 A Yes, he called me on direct connect and I
23 keyed up and told him to go ahead, and he said, yeah,

1 A No.

2 Q When you -- after the phone conversation,
3 did you expect that Craig was going to be heading
4 back to Pensacola at some point in the near future?

5 A Yes.

6 Q And did you know whether or not Craig had
7 picked up the load in Atlanta during that
8 conversation?

9 A No, I do not.

10 Q Did you know who -- did you know Craig's
11 aunt's name?

12 A No.

13 Q And when I say did you know her name,
14 meaning from any conversations you ever had with him,
15 did you -- had he ever mentioned his aunt?

16 A No.

17 Q Did he tell you her name at that time?

18 A No.

19 Q Did he tell you where she lived?

20 A No.

21 Q So, the only reason -- your understanding
22 of the only reason Craig was delayed was simply
23 because he was trying to make a point to his wife,

1 who you had gathered he was in a dispute with?

2 A Yes.

3 Q And he was just trying to show her that
4 -- you know, that -- you know, that -- well, he was
5 just trying to make a point to her, I guess is what
6 you said?

7 A Yes.

8 Q And you -- from your communication with
9 him, it had nothing to do with being mad at Benton
10 Express? From your conversation with Craig, you
11 would agree that it had nothing to do with being mad
12 with Benton Express?

13 A No.

14 Q And from your conversation with Craig, he
15 said nothing bad about Benton Express, did he?

16 A No, he never said anything bad.

17 Q And from your knowledge of Craig, you
18 would -- would you agree with me from your experience
19 with him -- and you told me you considered him a
20 friend. You would agree with me that he was happy
21 with his job at Benton Express?

22 A Yes.

23 Q Do you know if Craig was in any way

1 drivers would deliver those goods?

2 A Well, you're asking me what they do and I
3 don't really know what they do because I go home and
4 go to bed.

5 Q Okay. Well, I'm just asking you, when
6 you was a city driver, would you deliver the goods
7 that the line-haul drivers brought back to the
8 Pensacola terminal?

9 A Yes.

10 Q And would you start delivering those
11 goods on Monday when you came to work?

12 A If the freight was there, yes.

13 Q Okay. So, as a city driver, did you
14 generally work -- what days did you generally work?

15 A Monday through Friday.

16 Q Okay. And whatever goods was there on
17 Friday, you would deliver them throughout the city?

18 A Yes.

19 Q And as more goods came in, you would
20 deliver those goods; is that right?

21 A Time allowing, yes.

22 Q Right. And then whatever you didn't do
23 on Monday, you would come back in on Tuesday and